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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matters of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	
Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas	)	NSD File No. 96-8
	)	
Administration of the North American Numbering Plan	)	CC Docket No. 92-237
	)	
Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois	)	IAD File No. 94-102

PETITION FOR RECONSIDERATION OF SBC COMMUNICATIONS INC.

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October 7, 1996

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PETITION FOR RECONSIDERATION OF
SBC COMMUNICATIONS INC.

SUMMARY*

The Order exceeds the Commission's statutory authority with respect to dialing parity, nondiscriminatory access, network disclosure and number administration.

The Commission should clarify that the Order requires existing customers to be notified, in appropriate education programs, that they have a choice of intraLATA toll carriers. However, absent an affirmative response to change carriers, customers should be allowed to remain presubscribed to their existing intraLATA toll carrier. New customers, on the other hand, who do not choose an intraLATA toll carrier should be required to dial an access code to complete an intraLATA toll call.

The Order's requirement that BOCs provide intraLATA toll dialing parity by no later than February 8, 1999, whether or not a BOC has received interLATA authorization from a state, and whether or not a state has ordered implementation by February 8, 1999, is contrary to Section 271(e)(2)(B) of the Communications Act. This requirement should be modified to track exactly the language of the Act, including preservation of state authority with respect to ordering implementation of this intrastate service.

The Communications Act provides no basis for the Commission's extension of its principles for interim number portability cost recovery to dialing parity cost recovery. There is no supporting statutory authority. Cost recovery for dialing parity implementation should be handled in the manner intended by Congress: through good faith negotiations among parties.

In disputes involving operator services or directory assistance, placing the burden of proof upon the defendant is inconsistent with the basic rule, universally followed, that the party alleging

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* All abbreviations used herein are referenced within the text.

the existence of facts must prove them. The Commission must reverse this portion of the Order. In all disputes, the burden of proof must be upon the party alleging facts to prove them.

Requiring SWBT to make available to interconnectors "adjunct" operator services and directory assistance services is inappropriate because it forces SWBT to provide access to intellectual property in violation of third parties' rights. The Commission must reverse this requirement.

The Commission should also modify the Order to adopt a definition of the network disclosure requirement that neither adds nor detracts from the statutory language. The Commission is simply wrong to conclude that the "plain language of the statute requires imposition of public disclosure requirements only upon incumbent LECs." At a minimum, the Commission should modify the Order to impose public disclosure requirements on all telecommunications carriers.

SBC generally endorses the Commission's conclusion that "the judicious use of nondisclosure agreements will help protect incentives to develop innovative network improvements, and will also protect against potential threats to both national and network security by limiting the flow of detailed information concerning the operation of the national telecommunications network." SBC seeks reconsideration, however, of the Commission's conclusion that the applicable public notice time period should be tolled during the negotiation of suitable nondisclosure agreements. The Commission should modify its order to delete this unnecessary impediment to the efficient and timely implementation of network changes.

The Order's biggest problem is the allocation of number portability costs on the basis of gross revenues. The burden of number administration costs thus is placed disproportionately upon LECs. Such inequity will place LECs at a competitive disadvantage as IXCs enter the intraLATA

toll and local markets. SBC therefore suggests that number administration costs be allocated to telecommunications providers on the basis of elemental access lines.

SBC is concerned that language in the Order may be misconstrued as somehow preventing state commissions from using voluntary wireless conversions to lessen the burden of geographic splits on consumers. Voluntary wireless conversions can play an important role in the NPA relief effort, especially when splitting metropolitan areas. The Commission should clarify that its language is not meant to preclude voluntary wireless conversions as part of an NPA geographic split plan, and in fact the Commission should encourage voluntary wireless conversions whenever feasible.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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PETITION FOR RECONSIDERATION OF
SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC) on behalf of its subsidiaries, Southwestern Bell Telephone Company (SWBT) and Southwestern Bell Mobile Systems (SBMS), hereby files its Petition for Reconsideration in the captioned proceedings. Specifically, SBC requests the Commission to reconsider the Second Report and Order and Memorandum Opinion and Order (Order), released August 8, 1996, with respect to issues relating to dialing parity, nondiscriminatory access, network disclosure, and number administration. In each of these areas, the Commission has significantly departed from proper statutory and regulatory principles. The Commission should

grant this Petition for Reconsideration, reverse its erroneous conclusions, and enter an order consistent with the relief discussed below.

I. DIALING PARITY

A. ASSIGNMENT OF PRESUBSCRIBED INTRALATA TOLL CARRIER FOR EXISTING CUSTOMERS

Several paragraphs of the Order discuss the manner in which intraLATA toll dialing parity will be implemented. The Commission clearly and appropriately declined to mandate balloting in order to allocate existing customers that fail to select a primary intraLATA toll carrier among such carriers.[1] Additionally, the Commission has ruled that a new customer that fails to make a PIC selection will not be automatically routed to any carrier for intraLATA toll calls but rather must dial an access code in order to complete such calls. However, the Order contained confusing and seemingly inconsistent language about the procedure for handling existing customers that do not provide their local exchange carriers (LECs) with intraLATA toll presubscription instructions. SBC requests the Commission to take action to resolve these apparent inconsistencies so that customer confusion and inconvenience can be minimized. The Commission should clarify that it contemplated that if, after an appropriate customer education effort, an existing customer fails to provide his LEC with a "PIC" selection, then that customer may remain presubscribed to the LEC for intraLATA toll calls.

The following provisions of the Order are examples of the lack of clarity that the Commission should address :

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[1]Order at para. 80.

- Paragraph 41 provides that a LEC "may not accomplish toll dialing parity by automatically assigning toll customers to itself, to a customer's currently presubscribed interLATA or interstate toll carrier, or to any other carrier . . . ." Since new customers do not have a "currently existing . . . toll carrier," this provision appears to indicate that the LEC could not allow an existing customer who does nothing to indicate his PIC choice to remain presubscribed to the LEC for intraLATA toll calls.
- Paragraph 81 provides that "'dial-tone providers' should not be permitted automatically to assign to themselves **new** customers who do not affirmatively choose a toll provider." (emphasis added) This paragraph, which is a key discussion paragraph in the portion of the Order entitled "Consumer Notification and Carrier Selection Procedures," does not provide that a dial-tone provider should force an existing customer to dial an access code to complete an intraLATA toll call until such customer affirmatively selects a primary carrier. Since the Commission recited that some commenters had urged that existing customers who do not affirmatively change their intraLATA carrier should remain with the dial-tone provider,[2] and since the Commission did not reference "existing" customers in this paragraph, "existing" customers should not be required to dial access codes to make intraLATA toll calls and may remain with their existing intraLATA provider.
- Appendix B -- Final Rules, § 51.209(c), provides that "[a] LEC may not assign automatically a customer's intraLATA toll traffic to itself, to its subsidiaries or affiliates, to the customer's presubscribed interLATA or interstate carrier . . . ." The rule

[2]Id. at para. 79.

implementing the carrier selection process thus appears to be consistent with paragraph 41, not paragraph 81.

Paragraph 41 and the new rule section, but not paragraph 81, imply that *all* customers, both "existing" and "new," would be required to indicate affirmatively their choices of primary intraLATA toll carriers. The Order implies that if a customer, "existing" or "new," does *not* affirmatively select an intraLATA toll carrier, then that customer would be forced to dial an access code to make an intraLATA toll call until the customer affirmatively selected an intraLATA toll carrier. Assuming that no customer education program, no matter how well designed or implemented, will educate *all* existing customers concerning the advent of intraLATA toll dialing parity, tremendous customer confusion and inconvenience will of course result if existing customers are required either to make an affirmative selection of an intraLATA toll carrier or to dial an access code to complete all intraLATA toll calls.

Furthermore, if an "existing" customer that fails to make a timely PIC selection is forced to dial an access code to place an intraLATA toll call, this action will actually constitute a degradation of the service to which the "existing" customer subscribed. Certainly, it is not the intent of the Commission to force an "existing" customer, who prior to the implementation of dialing parity could place an intraLATA toll call without dialing an access code, to now use an access code to place the same call just because the customer did not select affirmatively an intraLATA toll provider. With respect to "existing" customers, the fairest and least disruptive approach is to allow the "existing" customer to remain with his current intraLATA toll carrier unless and until the customer has made an affirmative selection that evidences a clear desire to change carriers.[3] If an "existing" customer

[3] AT&T and Sprint have both supported this approach in the past. In Project No. 16133, (continued...)

has not requested to switch his intraLATA toll carrier selection, after receiving the deluge of marketing materials that will most likely accompany the implementation of intraLATA dialing parity, then it would be quite reasonable to conclude that this customer is satisfied with his current intraLATA toll provider or is not interested in changing carriers. Accordingly, absent an affirmative showing by an "existing" customer of a desire to change his intraLATA toll carrier, the Commission's rules should allow the "existing" customer to remain with his current carrier.

On the other hand, it is reasonable that "new" customers be queried (in the same manner as they are asked about their choice of an interLATA toll carrier) about their choice of intraLATA toll carriers. If these "new" customers choose not to select a carrier for their intraLATA toll traffic, then, as the Order indicates, they should be required to dial a carrier access code to make intraLATA toll calls, until they affirmatively select a primary intraLATA toll carrier.

SBC hereby requests that the Commission clarify that the Order requires that "existing" customers be notified, in appropriate customer education programs, that they have a choice in the selection of an intraLATA toll carrier but, absent an affirmative response indicating their desire to

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[3](...continued)
Concerning Proposed Rule Relating to IntraLATA Equal Access (16 Tex. Admin. Code § 23.103), before the Texas Public Utility Commission, AT&T stated that:

> AT&T proposes, however, that the PIC default for existing customers be the ILEC. While AT&T obviously stands to gain as a result of using the interLATA PIC as the default carrier, AT&T believes that customers will be better off if competitive intraLATA long distance companies (including AT&T) are required to win customers one at a time based upon the services and value they offer. Even though this may mean that many customers are likely to remain with the ILEC for some period of time, AT&T believes that this default mechanism is preferable for existing customers that do not affirmatively exercise a choice for an intraLATA carrier. [Initial Comments of AT&T at p. 7.]

Likewise, in the same docket, Sprint stated that "[t]he automatic default selection for an existing customer should be the customer's current intraLATA carrier or certified telecommunications utility (CTU)." [Joint Comments of Sprint, et al, at p. 1]

change carriers, they should be allowed to remain presubscribed to their existing intraLATA toll carrier, which is likely their LEC, until such time as they indicate a different choice. On the other hand, "new" customers who do not choose an intraLATA toll carrier should be required to dial an access code to complete an intraLATA toll call, as provided in the Order.

B. IMPLEMENTATION SCHEDULE FOR BOC PROVISION OF INTRALATA TOLL DIALING PARITY

The Order requires that all LECs, including BOCs, implement toll dialing parity by no later than February 8, 1999. Furthermore, the Order requires that all LECs, including BOCs, implement intraLATA toll dialing parity throughout a state coincident with their provision of in-region interLATA or in-region interstate toll services in that state. Finally, the Order provides that non-BOC LECs that currently are providing in-region interLATA or in-region interstate toll services, or that provide such services before August 8, 1997, must implement toll dialing parity by August 8, 1997.[4] The mandate in the Order that BOCs provide intraLATA toll dial parity by no later than February 8, 1999, without regard to whether a BOC has received interLATA authorization within a state or to whether a state has ordered implementation by February 8, 1999, is contrary to Section 271(e)(2)(B) of the Communications Act. The Commission must therefore reconsider its Order with respect to that mandate and modify it so that it will comply with the Act.

Section 251(a)(3) of the Act imposes a general obligation on all LECs to provide dialing parity to competing providers of telephone exchange service and telephone toll service. Section 271(e)(2)(A) provides that a BOC that is granted authority to provide interLATA services in a state under Section 271(d) shall provide intraLATA toll dialing parity throughout that state coincident

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[4]Order at paragraphs 7, 59, 62.

with its exercise of that authority. Section 271(e)(2)(B) provides, with limited exceptions, that a state may not require a BOC to implement intraLATA toll dialing parity in that state before the earlier of that BOC's authorization to provide interLATA services in the state or February 8, 1999. Nothing in that subsection, however, *requires* a state to order a BOC to implement intraLATA toll dialing parity on February 8, 1999, if that BOC does not yet have interLATA authorization; to the contrary, the decision is left to the discretion of the state.

In ordering that all LECs, including BOCs, must implement toll dialing parity by no later than February 8, 1999, without regard to whether a BOC has received interLATA authorization in a particular state and without regard to whether such state has determined that such implementation should still be coincident with the BOC's provision of interLATA services, the Commission has overstepped its authority under the Communications Act. The Commission must modify its Order with respect to BOC provision of intraLATA toll dialing parity to track exactly the language of the Act, including preservation of state authority with respect to ordering implementation of this intrastate service.

C. COST RECOVERY

In the Order, the Commission concluded that costs for implementation of dialing parity should be recovered by LECs in the same manner as the costs for interim number portability.[5] The Commission restated its principles for competitively-neutral cost recovery, holding that any cost recovery mechanism should: (1) not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber; and (2) not have

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[5]Id. at para. 92.

a disparate effect on the ability of competing service providers to earn a normal return.[6] The Commission rejected arguments asserting that costs should be borne only by new entrants and concluded that LECs could recover only the incremental costs of implementing number portability.[7]

The Communications Act provides no basis for the Commission's extension of its principles for interim number portability cost recovery to dialing parity cost recovery. As SBC pointed out in its Petition for Reconsideration in the number portability docket,[8] the Commission exceeded its statutory authority in extending the "competitively-neutral" standard to interim number portability cost recovery. The Commission now compounds that error by attempting to extend these "principles" to dialing parity cost recovery. Commenters who proposed and supported the extension of the interim number portability cost recovery "principles" to dialing parity provided no statutory authority for this theory for a very good reason: *there is no supporting statutory authority.*

The Telecommunications Act of 1996 contemplates that dialing parity issues would be initially left to negotiations between interconnecting carriers. Furthermore, since dialing parity as contemplated by the Telecommunications Act is largely an intrastate, intraLATA issue, the states are in the best position, and in fact have jurisdiction, to address dialing parity cost recovery issues, should they arise in the course of arbitration of negotiated agreements. However, absent the ability to negotiate a dialing parity cost recovery mechanism, a mechanism like the elemental access line (EAL) method, discussed later herein, better meets the competitively neutral criteria, than the method suggested by the Commission.

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[6]Id. at para. 94.

[7]Id.

[8]SBC Communications Inc., Petition for Reconsideration, filed August 26, 1996, CC Docket No. 95-116, In the Matter of Telephone Number Portability, at 3-6.

D. LATAS THAT CROSS STATE BOUNDARIES

Paragraph 41 of the Order, provides "when LATA boundaries encompass parts of two adjacent states, we permit the LEC to implement in each state the procedures that state approved for implementing toll dialing parity within its borders." SBC requests clarification that the intent of this section is that, in such instances, the procedures to be followed will be those applicable to the state in which "dial tone" is provided.

II. NONDISCRIMINATORY ACCESS

A. BURDEN OF PROOF

Without exception, the Order places the burden upon the incumbent local exchange carriers (ILEC) to prove a negative – that it has not discriminated. For example, a customer of any telephone company providing operator services should, in conformance with the Order, be able to obtain such services by dialing "0" or "0-plus the desired telephone number."[9] If a dispute arises regarding a competitor's access to operator services, the Order places the burden upon the providing ILEC to demonstrate, "with specificity," that it has not discriminated regarding access to operator services.[10] The same rule applies to directory assistance. When a dispute arises as to the adequacy of the access received by the competitor's customers, the burden is on the ILEC permitting access to the service to demonstrate "with specificity" that it has not discriminated in allowing competitors access to directory assistance. In a dispute over dialing delay, the Order places the burden of proof

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[9] Order at para. 13.

[10] Id. at paras. 115, 121 and 122.

upon the providing ILEC to demonstrate "with specificity" that it has not processed competitors' call more slowly than its own.[11]

Thus, in FCC formal complaints or civil actions involving operator services, directory assistance or dialing delay, the burden of proof will be upon the defendant to prove lack of discrimination.

Placing the burden of proof upon the defendant in an administrative or civil action is inconsistent with the basic rule, universally followed, that the party alleging the existence of facts must prove them.[12] It is also inconsistent with the Commission's own rules. Commission Rule 1.254 places the burden of proof upon the applicant at any hearing upon an application. Similarly, Rule 1.255 requires the complainant, in a hearing on a formal complaint, to open and close the proceeding and bear the burden of making a prima facie case.

If the burden of proof in a complaint proceeding alleging discrimination is placed upon the defendant, then parties will, with complete impunity, file formal complaints at the drop of a hat. This procedure is inappropriate and must be reversed by the Commission. In all disputes, the burden must be upon the party alleging facts to prove them.[13]

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[11] Id. at para. 161.

[12] See, e.g., Compagnie des Bauxites de Guinee v. Insurance Co. of North America, 551 F. Supp. 1239 (D.C. Pa. 1982); Dyco Petroleum Corp. V. Rucker Co., 443 F. Supp. 685 (D.C. Okla 1977).

[13] In the same vein, the Order requires that an ILEC's refusal to "brand" resold operator services as those of the reseller creates a presumption that the ILEC is unlawfully restricting access to operator services. (Para. 128) The same rule applies to branding of directory assistance. (Para. 148) In these cases, the Commission's rule would be, in a sense, even more egregious than placing the burden of proof upon the defendant. In branding disputes, if the Commission's rule stands, ILECs would be presumed to have discriminated. The effect of the rule would be to prohibit ILECs from refusing to brand in the name of the reseller, even if such branding were inappropriate under

(continued...)

B. ACCESS TO INTELLECTUAL PROPERTIES OWNED BY OTHERS

To the extent that operator services use any "adjuncts" that are not "telecommunications services," such that resale of those adjuncts would not be required under Section 251(b)(1), ILECs must, under the terms of the Order, nonetheless make such adjunct services available to competing providers as a requirement of nondiscriminatory access under 251(b)(3).[14] The same is true for "adjunct" directory assistance services which are not "telecommunications services."[15]

This requirement places local exchange carriers such as SWBT in an impossible position. Both operator services and directory assistance services use software which is not a telecommunications service and which, in many cases, SWBT does not even own. For example, SWBT uses special software to determine how many operators should be on duty at any given hour of any given day. The Order provides no rationale for requiring SWBT to make such software available to its competitors.

In a very real sense, the requirement that ILECs make available to competitors proprietary business information, such as software which is not a telecommunications service, goes to the very heart of a company's ability to compete in an open market. If SWBT must make available everything relating to operator services and directory assistance, whether or not a telecommunications service, then how can SWBT possibly hope to compete? Such a requirement

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[13](...continued)
applicable law.

[14] Order at para. 13.

[15] Id. at para. 14.

makes it impossible for SWBT ever to gain an advantage through hard work, wise management, thriftiness, or any of the other virtues once considered admirable.

Moreover, with software and other items which SWBT does not even own, the Order's requirement creates a host of problems. In providing operator services and directory assistance, SWBT employs many items licensed to SWBT by third parties. The following is only a partial list:

1. LIDB (Line Information Data Base) Software (Bellcore vendor)
2. AABS (Automated Alternate Billing Service) Equipment (Nortel vendor)
3. DAS/C (Directory Assistance System/Computer) Version 3 (Nortel vendor)
4. D1 (Directory One) (Nortel vendor)
5. EFMS (Enhanced Force Management System) (EDS Vendor)
6. Gateway and IVS (Interactive Voice System) (Nortel vendor)

Simply put, the Commission's Order regarding "adjunct" services is invalid because it requires SWBT to provide access to intellectual property rights of third parties in violation of those third parties' rights.

Incumbent LEC's networks are built upon licenses to use obtained from their vendors. The Bell Operating Companies (BOC's) networks were built from licenses to use patents, copyrights and technical information, i.e., trade secrets, obtained from AT&T and its affiliates, primarily Bell Labs and Western Electric. At divestiture, the BOCs were licensed under all patents, copyrights and technical information needed to provide for their core businesses. Additionally, the BOCs were licensed under AT&T patents filed through 1989. The BOCs' licenses were only to use or to have

products made or services performed for them using the licensed intellectual properties. All other rights remained with the AT&T group except for some licenses, etc. to Bellcore.

As the network changed, it was built using vendors products and services protected by intellectual property rights. Again, the BOCs, for the most part, obtained only a right to use. There was little BOC intellectual property development largely due to the manufacturing prohibition of the Modification of Final Judgment (MFJ). Equipment is often covered by patents but vendor contracts often do not mention patents since the purchaser is automatically licensed under any applicable patents. See United States v. Univis Lens Co., 316 U.S. 241 (1942). A patent may be on the equipment itself or on a method or process not necessarily tied to the equipment. An automatic license on a method patent may be implied from the circumstances of the purchase of equipment or services based upon the parties' actions and the facts surrounding the purchase. See De Forest Radio Telegraph & Telegram Co. V. United States, 273 U.S. 236 (1926).

Method or process patents are often obtained on the methods by which software performs its function. Additionally, the software code may be protected by copyright, and the technical documentation for the software or the equipment may be licensed by the vendors as a trade secret. As a general rule, the equipment housing the software is sold outright, the software is licensed as a right to use, and the technical information licensed under a duty to maintain its confidentiality.

The FCC order directs the ILECs to allow requesting carriers to use network elements in almost complete disregard for the fact that the ILECs do not own network intellectual properties and in apparent disregard for the contract and intellectual property rights of the owners. Suppose for example, a requesting carrier desires to use a network element purchased from a vendor consisting of hardware, software, and technical documentation, and that the contract is of the standard type.

The contract may not mention the patents on the equipment or on the methods embodied in the software; it would give the buyer the right to use but not transfer or sublicense the software and would provide that the buyer must maintain the confidentiality of the technical information. Allowing the requesting carrier to use the network element would violate the vendor's intellectual property rights.

A material breach of a copyright license constitutes infringement.[16] Thus, not only would the requesting carrier be infringing third party intellectual property rights, so would SWBT in allowing the requesting carrier to use the licensed item.

Also, as mentioned above, many items used by SWBT to provide operator services and directory assistance contain proprietary SWBT business information. Requiring SWBT to turn over such proprietary material to third parties would violate various state trade secret protection statutes.

The Commission must reverse the requirement that SWBT make available to competitors non-telecommunications services relating to directory assistance and operator services.

III. NETWORK DISCLOSURE

A. DEFINITION

In the Order, the Commission defined the network disclosure required by Section 251(c)(5) as follows:

> Information about network changes must be disclosed if it affects competing service providers' performance or ability to provide service.[17]

The Commission pointed out that USTA suggested an alternate definition:

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[16] CMAX/Cleveland, Inc. V. UCR, Inc., 804 F. Supp. 337, 356 (M.D. Ga. 1992).

[17] Order, at para. 171.

> All changes in information necessary for the transmission and routing of services using the local exchange carrier's facilities, or that affects interoperability.[18]

In adopting its own definition, the Commission rejected the USTA suggestion as well as, ironically, the basis for the USTA suggestion: the statutory language.

There is no basis for the Commission to substitute its own definition of the scope of the network disclosure obligation for that provided for in the Communications Act. Section 251(c)(5) provides as follows:

> NOTICE OF CHANGES. The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

This statutory language is virtually identical to the USTA suggestion, not to the Commission conclusion. The Commission should therefore modify the Order to adopt a definition of the network disclosure requirement that neither adds to nor detracts from the statutory language.

B. APPLICABILITY OF NETWORK DISCLOSURE REQUIREMENT

While the Commission is correct in concluding that Section 251(c) is applicable to incumbent LECs, the Commission is wrong to conclude broadly that the "plain language of the statute requires imposition of public disclosure requirements only upon incumbent LECs."[19] The imperative of the Telecommunications Act of 1996 was to promote vigorous competition -- and such competition depends upon ubiquitous interconnectivity of communications networks. Section 256(b)(1), for example, requires the Commission to establish procedures to oversee "coordinated network planning by telecommunications carriers and other providers of telecommunications service for the effective

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[18]Id. at para. 168.

[19]Id. at para. 172.

and efficient interconnection of public telecommunications networks used to provide telecommunications service. . . ." Certainly that mandate, among others, provides more than sufficient authority for the Commission to require public disclosure of network changes of *all* telecommunications carriers, not merely incumbent LECs.

While the Commission stated that it intends to address carrier and Commission obligations under Section 256 in a separate rulemaking proceeding,[20] the Commission seemed to contemplate that the requirements of Section 256 would be more, not less, rigorous than those imposed pursuant to Section 251(c)(5).[21] Since Section 256 of the Communications Act applies to *all* telecommunications carriers, and since Section 251(c)(5), in the Commission's words, "sets forth one specific procedure to promote interconnectivity," the Commission should, at a *minimum*, modify the Order to impose the public disclosure requirements required in this proceeding on *all* telecommunications carriers. The Commission could then consider in a future proceeding whether Section 256 imposes more stringent requirements on *all* telecommunications carriers than those implemented in this proceeding.

C. TIMING OF DISCLOSURE

As the Commission recognized in the Order, many network changes can be implemented within six months of the make/buy point, and a procedure for providing short-term notice of such changes is necessary.[22] Major network changes, such as switch replacements and major cable facilities deployment, are planned well in advance, but an increasing number of network changes are

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[20]Id. at para. 244.

[21]Id.: "We do not decide here whether compliance with section 251(c)(5) is sufficient to satisfy section 256, however."

[22]Id. at para. 215.

implemented quickly in order to respond to market demands. In order to satisfy customer needs, network changes often must be completed as quickly as technology advances permit.

While the Order recognized the growing need for shorter implementation intervals for network changes, the Order also provided for a procedure for short-term notice filings that is extremely complex and cumbersome. An interested service provider has nine days from Commission public notice of a short-term filing to file objections; the LEC that initiated the short-term filing has five days to respond to the objections; and the contents of both such filings are specifically provided for in the Order and in the related Commission rules. After that pleading cycle, the Common Carrier Bureau will establish a "reasonable" public notice time period; finally, the Commission will decide whether implementation of the network change may proceed.[23] This process could easily consume two to three months, during which the party desiring to meet customer needs by implementing a network change will be unable to proceed with deployment of the changes.

SBC urges the Commission to modify the Order to simplify and streamline the short-term notice process. For example, short-term notifications could be presumed to be prima facie reasonable, with the party filing objections required to sustain a high burden of proof to delay the implementation of the associated network changes. If the Common Carrier Bureau determined, after reviewing the objections and the response, that the objecting party had not met its burden to rebut the presumption of reasonableness, then no public comment cycle would be necessary. Such a process would impose, at most, a one-month delay in implementation of a network change. While even one month may prove to be critical in implementation of some changes, the Commission's willingness to use sanctions to punish frivolous objections should minimize the roadblocks that

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[23] Id. at paras. 215-222.

competing parties may wish to impose on carriers that must satisfy network disclosure requirements.[24]

D. PROTECTION OF CONFIDENTIAL OR PROPRIETARY INFORMATION

SBC generally endorses the Commission's conclusion that "the judicious use of nondisclosure agreements will help protect incentives to develop innovative network improvements, and will also protect against potential threats to both national and network security by limiting the flow of detailed information concerning the operation of the national telecommunications network."[25] SBC seeks reconsideration, however, of the Commission's conclusion that the applicable public notice time period should be tolled during the negotiation of suitable nondisclosure agreements.[26] Such an interruption of the time period gives inappropriate power to a party that may wish to delay the carrier's implementation of a network change: by refusing to agree to reasonable nondisclosure terms, the party requesting confidential or proprietary information prevents the public notice time period from proceeding. While the Communications Act places the burden of disclosing certain network changes on carriers, it does not provide that a competitor wishing to gain access to confidential or proprietary information should be vested with power to paralyze the implementation of those network changes.

In SWBT's experience, parties that seek to obtain information for appropriate purposes are reasonable and expeditious with negotiating nondisclosure agreements. The only reason that

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[24]The reciprocity of network disclosure obligations suggested in the preceding subsection would go far to assure that competitors would not unnecessarily impede network changes proposed by other carriers, since their own network changes would be subject to the same disclosure requirements.

[25]Id. at para. 254.

[26]Order at para. 258.

negotiation periods might be "protracted" would be that the party seeking disclosure actually wishes to delay the network change rather than to obtain the information under appropriate safeguards. The Commission should modify its order to delete this unnecessary impediment to the efficient and timely implementation of network changes.

IV. NUMBER ADMINISTRATION

A. COST RECOVERY

Under the Order, "only 'telecommunications carriers,' as defined in Section 3(44), [will] be ordered to contribute to the cost of establishing number administration; and such contribution shall be based only on each contributor's gross revenues from its provisions of telecommunications services."[27]

The Order refers to the cost of "establishing" number administration, implying that, after establishment, some other form of funding may be imposed. If this is the Commission's intention, then the Order should say so. What will the other form of funding be?

The Order's biggest problem, however, is the allocation of number administration costs on the basis of gross revenues, minus payments to other carriers. Such a cost allocation is not competitively neutral, because it eliminates from IXC assessments the access charges which IXCs pay to local exchange carriers. The burden of number administration costs thus is placed disproportionately upon LECs. Such inequity will place LECs at a competitive disadvantage as IXCs enter the intraLATA toll and local markets. Further basing number administration costs upon

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[27] Id. at para. 342.